



January 31, 2001

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2001-0362

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143877.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information relating to an internal investigation. You argue that, under section 552.022(a)(1) of the Government Code, a completed investigation is made public. Thus, you contend that the requested information is protected by section 552.022 because it is part of an incomplete and ongoing investigation. We have considered your argument and reviewed the submitted information.

We first note that information in the possession of a governmental body, such as the department, is generally considered public information for purposes of the Public Information Act (the "Act"). *See* Gov't Code §§ 552.002, .021; Open Records Decision No. 363 (1983). Such information may only be withheld from the public if the governmental body is able to demonstrate to this office that the information is within one of the exceptions listed under subsection C of the Act. *See* Open Records Decision Nos. 542 at 2-3 (1990), 363 (1983). Furthermore, section 552.022 does not serve as an exhaustive list of public information or as an exception to information by negative implication. Rather, it lists eighteen categories of public information that generally may be withheld only if confidential by law or, in the case of completed reports, if excepted under section 552.108 of the Government Code. *See* Gov't Code § 552.022 (Section 552.022(a) expressly states that it does not limit "the amount or kind of information that is public information under this chapter."). Where, as here, a governmental body possesses information that is the subject of a request under the Act, the governmental body must assert an exception under subsection C in order to withhold the information. *See* Gov't Code § 552.301; ORD 542 at 2-3, 363. Because you have not raised such an exception and it does not appear that the information is otherwise confidential, you must release the information. *See* Gov't Code §§ 552.301, .302; ORD 363.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

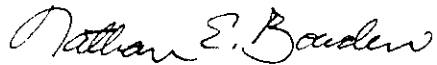
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 143877

Encl: Submitted documents

cc: Ms. Helen Sipple
9027 Brickwood
San Antonio, Texas 78250
(w/o enclosures)